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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 282

HARRY J. AMELL, ET AL., PETITIONERS

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The orders of the Court of Claims transferring these cases to federal district courts (R. 6, 13, 24–25, 31) are unreported.

JURISDICTION

The orders of the Court of Claims were entered on April 12, 1965 (R. 6, 13, 24, 31). The petition for a writ of certiorari was filed on June 22, 1965, and granted on October 11, 1965. 382 U.S. 810 (R. 32). This Court's jurisdiction is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether a seaman employed by the United States who has a claim for wages may sue the United States

only in a federal district court under the Suits in Admiralty Act, and not in the Court of Claims under the Tucker Act.

STATUTES INVOLVED

The Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U.S.C. 741 *et seq.*, provides in pertinent part:

> *Section 1*
>
> No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions * * *.
>
> *Section 2*
>
> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the

vessel or cargo charged with liability is found. * * *

* * * * *

Section 5

Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided,* That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim * * *.

The Tucker Act, 24 Stat. 505, as amended, 28 U.S.C. 1491, provides in pertinent part:

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

The Classification Act of 1949, 63 Stat. 954, as amended, 5 U.S.C. 1071 *et seq.,* provides:

Section 202(8), 5 U.S.C. 1082(8)

This chapter * * * shall not apply to—

* * * * *

(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry * * *.

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The Federal Employees Pay Act of 1945, 59 Stat. 295, 5 U.S.C. 901, *et seq.*, provides:

Section 205, 5 U.S.C. 913

> Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. * * *

The Act of March 28, 1934, Section 23, 48 Stat. 522, as amended, 5 U.S.C. 673c, provides:

> * * * That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *.

STATEMENT

The case is a consolidation of four separate actions for wages, filed in the Court of Claims under the Tucker Act by seamen employed on government vessels.

No. 387–64 (*Amell* v. *United States*) below was brought by 67 seamen employed as licensed marine engineer officers on vessels operated by the Military Sea Transportation Service (MSTS), Atlantic Area, Department of the Navy (R. 2). They alleged that an agreement negotiated between their collective bargaining representative, the National Marine Engineer's Beneficial Association (NMEBA), and the Commander, MSTS, Atlantic Area, provided that "prevailing pay rates and practices in the maritime industry

are ascertained by analysis of * * * agreements and contracts between commercial carriers and maritime labor unions" (R. 3); that under the collective bargaining agreements in effect between private shipowners and NMEBA, private marine engineers received 3½ percent pay increases effective June 15, 1962, and June 15, 1963 (R. 2); and that MSTS had refused to pay its licensed marine engineers, including petitioners, these increases (R. 3). Petitioners alleged that such refusal constituted a violation of the agreement between NMEBA and the Commander, MSTS, Atlantic Area (R. 3), and of Section 202(8) of the Classification Act of 1949, which provides that seamen employed by the government shall be paid not according to ordinary civil service scales but "in accordance with prevailing rates and practices in the maritime industry" (R. 10).

No. 423–64 (*Allwein* v. *United States*) below was an action by 11 "boat group employees" of the Naval Ordinance Laboratory Test Facility of the Department of the Navy for overtime pay (R. 7–8). Petitioners alleged that they were required to work 8½ hours per day but were paid for only 8 hours of work per day, and that they were entitled to compensation for the ½ hour per day overtime (R. 8). Petitioners invoked as the basis of their claim Section 202 (8) of the Classification Act (R. 10) and Section 205 of the Federal Employees Pay Act of 1945, relating to payment for overtime work (R. 8–9). No. 269–64 (*Bennett* v. *United States*) was an identical action by 11 other boat group employees of the Naval Ordinance Laboratory (R. 14–17).

The fourth suit filed below, No. 333–64 (*Detling* v. *United States*), was brought by five seamen employed on a dredge operated by the Corps of Engineers of the Department of the Army (R. 25). They claimed that they are sometimes required to work certain "port watch tours of duty"; that during such port watch tours they must work 24 hours per day, but are paid for only 8 hours; and that they are entitled under the Classification and Federal Employees Pay Acts to be paid for the other 16 hours at overtime rates (R. 26–27).

In all four cases, petitioners predicated jurisdiction on the Tucker Act (R. 2, 7, 15, 25), and in all the United States filed motions to transfer the actions to various federal district courts on the ground "that it appears from the face of the petition[s] that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus a matter of admiralty and maritime jurisdiction justiciable exclusively in the district courts [under the Suits in Admiralty Act] * * *" (R. 4–5, 11–12, 23, 29–30). The Court of Claims, in brief orders (R. 6, 13, 24–25, 31), granted the motions.

SUMMARY OF ARGUMENT

In the Tucker Act, Congress empowered the Court of Claims to hear certain claims against the United States, including claims in admiralty. Later, Congress passed the Suits in Admiralty Act, which established a comprehensive machinery for suing the United States upon maritime claims. The sole issue

in this case is whether the later Act provides the exclusive remedy for seamen employed on vessels of the United States who have wage claims founded on federal employment statutes or contracts. We believe that it does.

I

The overriding purpose of the Suits in Admiralty Act was to create a single, comprehensive and uniform remedy, administered under the admiralty jurisdiction of the federal district courts, for the prosecution of maritime claims against the United States. Accordingly, this Court has held in an unbroken line of decisions that the Act provides the exclusive method of suing the United States upon a cause of action maritime in character, and that the Tucker Act, insofar as it may formerly have provided a basis for suits against the United States founded on maritime claims, has been repealed *pro tanto*.

Congress, moreover, on the several occasions when it has amended the Suits in Admiralty Act and related statutes, has placed its imprimatur upon the Court's holding. The principle that the Act's remedy is exclusive is now so deeply woven into the fabric of the Act that congressional action would be required to overrule it.

II

Since the remedy provided by the Act is exclusive, the Court of Claims acted correctly in transferring petitioners' suits to the appropriate district courts. This of course assumes—as we think clear—that petitioners have a remedy under the Suits in Admiralty Act. The Act, without qualification or exception,

gives the district courts jurisdiction of all claims against the United States of a maritime character. Seamen's wage claims, like other claims arising from maritime contracts, have traditionally been regarded as maritime, and the courts, accordingly, have uniformly assumed that wage claims of government-employed seamen are litigable under the Suits in Admiralty Act. This has also been the understanding of Congress.

III

Such a result is fully consistent with the purposes of the Act and with sound public policy. In enacting the Suits in Admiralty Act, Congress determined that admiralty issues involved in litigation against the United States should be heard in the federal district courts, presumably because of their expertise in admiralty matters. The issues typically raised in wage claims of government-employed seamen—and, in fact, the very issues raised by these petitioners in their complaints—are traditional admiralty issues. As we demonstrate, they turn on principles of admiralty law, not principles governing the compensation of federal employees generally; they ought, therefore, be tried in the federal district courts.

Moreover, the Suits in Admiralty Act provides a completely adequate framework for the prosecution of wage claims. Confining wage claimants to a remedy under the Act should not impair their ability to prosecute claims successfully. On the contrary, the admiralty remedy provided by the Act confers important advantages on wage claimants that they would not enjoy in Court of Claims actions.

IV

Finally, the result we urge is entirely consistent with this Court's decisions in *Johansen* v. *United States*, 343 U.S. 427, and *Patterson* v. *United States*, 359 U.S. 495, on which petitioners principally rely. In those cases it was held that the admiralty statutes [1] do not afford a remedy for personal injuries in cases within the scope of the Federal Employees Compensation Act, which gives government seamen (in common with other federal employees) a workmen's compensation form of remedy. The Court found that Congress in the Compensation Act had established a

[1] As originally enacted, the Suits in Admiralty Act was limited to government merchant vessels and tugboats, and excluded public vessels. The latter were separately covered in the Public Vessels Act, 43 Stat. 1112, 46 U.S.C. 781, *et seq.*, enacted five years later. The two statutes have generally been treated as being *in pari materia*. See, *e.g.*, *Patterson* v. *United States*, *supra*, at 496. Because of uncertainty engendered by the public-merchant vessel distinction (see H. Rep. No. 523, 86th Cong., 1st Sess., pp. 2–3; S. Rep. No. 1894, 86th Cong., 2d Sess., pp. 3–6), Congress in 1960 amended Section 2 of the Suits in Admiralty Act to delete the reference to merchant vessels. Act of Sept. 13, 1960, Pub. L. 86–770, 74 Stat. 912; see p. 19, *infra*. Thus, the Suits in Admiralty Act now extends to government public as well as merchant vessels. The vessels involved in No. 387–64 (*Amell*) below, alleged to be "operated and controlled by the Military Sea Transportation Service" (R. 2), might be either. Presumably the vessels involved in the other cases—boats used by the Naval Ordinance Laboratory and a dredge operated by the Corps of Engineers (R. 7, 14, 25)—are public vessels, although their character is not dealt with in the pleadings. As we have indicated, however, the distinction is no longer relevant to whether there is jurisdiction under the Suits in Admiralty Act.

comprehensive and particularized scheme of compensation to govern certain claims of federal employees, including seamen; had intended that this scheme provide the exclusive remedy for all claims within its scope; and had not intended to displace it in enacting the admiralty acts.

The Tucker Act, in contrast, cannot be regarded as a focused and deliberate effort to create a scheme of relief with respect to seamen's wage claims; it was intended merely as a general waiver of sovereign immunity for contract claims against the government. Hence, *Johansen* and *Patterson* are inapposite.

ARGUMENT

I. THE SUITS IN ADMIRALTY ACT PROVIDES THE EXCLUSIVE METHOD OF SUING THE UNITED STATES UPON A MARITIME CAUSE OF ACTION. THERE IS NO TUCKER ACT JURISDICTION OF SUCH A SUIT

In this part of our argument, we show that the Suits in Admiralty Act furnishes the exclusive remedy against the government in all cases where an action could be brought under the Act—*i.e.*, in all cases of a maritime character—and thus supersedes the Tucker Act insofar as that Act might otherwise empower the Court of Claims to hear suits based on maritime claims against the government. We note at the outset that we do not understand petitioners to deny the exclusive character of the remedy under the Suits in Admiralty Act.[2] Petitioners' basic contention,

[2] The *amicus curiae* brief of the National Maritime Union, however, contends that seamen employed by the government have concurrent remedies for wage claims under both the Tucker and Suits in Admiralty Acts.

rather, is that wage claims are not maritime claims within the intention of that Act, and hence are exclusively cognizable in proceedings under the Tucker Act. That question we take up in Point II.

A. As originally enacted in 1887, the Tucker Act gave the Court of Claims jurisdiction of claims "in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, *or admiralty* if the United States were suable * * *."[3] But in 1920 Congress passed the Suits in Admiralty Act (41 Stat. 525) and in Section 2 of that Act (now 46 U.S.C. 742) provided that in cases involving government merchant vessels or their cargoes, where "a proceeding in admiralty could be maintained" if the vessels or cargoes were privately owned, an admiralty suit could be brought against the United States. Section 2 provided further that suits under the Act "shall be brought" in federal district courts; Section 3 provided that the procedure in such actions should be applicable to "like cases between private

[3] Act of Mar. 3, 1887, c. 358, § 1, 24 Stat. 505 (emphasis added); see, also, Act of Mar. 3, 1911, c. 231, § 145, 36 Stat. 1136. For the present language of the Tucker Act (now 28 U.S.C. 1491), see p. 3, *supra*. The Court of Claims' jurisdiction under the Tucker Act is concurrent with the district courts in matters of less than $10,000, exclusive above that. 28 U.S.C. 1346(a).

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parties"; Section 5 imposed a two-year limitations period for suits under the Act; and Section 13 provided that "the provisions of all other Acts inconsistent herewith are hereby repealed." The remaining sections dealt with other procedural aspects of the newly created remedy.

The immediate occasion for such legislation was the unhappy experience under Section 9 of the Shipping Act, 1916, 39 Stat. 730, which had permitted judicial seizure of government vessels in admiralty suits against the government;[4] the Suits in Admiralty Act accordingly substituted an *in personam* remedy for the *in rem* remedy of the Shipping Act. However, there was more to the new Act, as this Court explained when faced with the issue whether a libel in admiralty against the United States could be maintained otherwise than under the Act's provisions. The Act, the Court observed, "had a wider effect and created a broader personal obligation of the United States, * * * like that of a private owner, which might be enforced in admiralty * * *." *Fleet Corp.* v. *Rosenberg Bros.*, 276 U.S. 202, 212.[5] It "provides a remedy in admiralty for adjudicating and satisfying all claims arising out of the possession or operation of merchant vessels of the United States" (276 U.S. at 213) and "furnishes a complete system of administration * * * by which uniformity is established as to venue, service of process, rules of decision

[4] *Johnson* v. *Fleet Corp.*, 280 U.S. 320, 325. See *The Lake Monroe*, 250 U.S. 246.

[5] See, also, *Eastern Transp. Co.* v. *United States*, 272 U.S. 675, 689-692; *Johnson* v. *Fleet Corp.*, *supra*, at 326.

and procedure, rate of interest, and periods of limitation" (*ibid.*).

The Court concluded that the Act "was intended to furnish the exclusive remedy in admiralty against the United States * * * on all maritime causes arising out of the possesssion or operation of merchant vessels" (*id.* at 214), although it reserved the question whether there might be concurrent legal remedies in the Court of Claims or district courts by virtue of the Tucker Act. Two years later, it held there were not. *Johnson* v. *Fleet Corp.*, 280 U.S. 320. The plaintiff in *Johnson* had brought a Tucker Act suit in federal district court against the United States for breach of a contract to carry sugar from Cuba to New York on a government merchant vessel. The Court held that the action could not be maintained.[6] Since the cause of action "arose out of the possession or operation of a merchant vessel by or for the United States" (p. 326), it was covered by the Suits in Admiralty Act. The Court concluded that the remedy under that Act was exclusive of all other remedies and that the Tucker Act had been repealed *pro tanto*.

The exclusivity principle of *Johnson* was reaffirmed in *Matson Navigation Co.* v. *United States*, 284 U.S.

[6] Three other cases were decided in the *Johnson* opinion. They involved actions against the government's operating agent, the Fleet Corporation. The Court held that these suits, too, were barred. This holding was later modified in *Brady* v. *Roosevelt S.S. Corp.*, 317 U.S. 575, but the Court there was at pains to reaffirm *Johnson* so far as suits against the United States were concerned. See p. 14, n. 7, *infra*.

352, and in several later decisions.[7] In *Matson,* the Court held that the Court of Claims' jurisdiction of a suit based upon alleged breach of a contract for the operation of government vessels had been "withdrawn from it by the Suits in Admiralty Act" (284 U.S. at 359); "jurisdiction of maritime causes of action against the United States, arising out of the operation of merchant vessels for it, is vested exclusively in the district courts." *Id.* at 356.

At the heart of these decisions is a recognition that the congressional purpose to afford a single, complete and uniform admiralty remedy in the Suits in Admiralty Act would be thwarted if claims cognizable under the Act could also be brought in different forums and under different rules. For example, since the Suits in Admiralty Act and the Tucker Act have different limitations periods (46 U.S.C. 745; 28 U.S.C. 2501), the result of concurrent jurisdiction would be that the government could not know in advance of suit whether the limitations period applicable to a particular claim was two or six years. It was precisely this kind of uncertainty that the uniform and exclusive procedure established by the Suits in Admiralty Act—with its express repeal of all prior inconsistent statutory provisions—was designed to dispel.

Moreover, Congress ordained that the remedial system it was establishing to govern maritime litigation against the government should be one fashioned and

[7] *Brady* v. *Roosevelt S.S. Corp.*, 317 U.S. 575, 577, 579; *Hust* v. *Moore-McCormack Lines*, 328 U.S. 707, 716–718, 720; *id.*, at 741 (dissenting opinion). See, also, *Cosmopolitan Co.* v. *McAllister*, 337 U.S. 783, which overruled *Hust* on an unrelated ground.

applied according to the principles of admiralty jurisdiction; the remedies created were remedies in admiralty. This purpose could be realized only if the remedy under the Suits in Admiralty Act was deemed to exclude any Court of Claims remedy. For "the District Courts are, in our judicial system, the accustomed forum in matters of admiralty; everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty." *Calmar S.S. Corp* v. *United States,* 345 U.S. 446, 455. As this Court pointed out in *Calmar,* the Court of Claims is not experienced in admiralty matters. If it had jurisdiction to hear maritime claims against the United States, therefore, a basic objective of the Suits in Admiralty Act would be defeated: to establish a uniform procedure *in admiralty* for the vindication of such claims. That is why Congress expressly provided in Section 2 of the Act that suits under it may be brought only in federal district courts.

B. The exclusivity principle enunciated in *Johnson* and the cases following it has been considered at length by Congress on a number of occasions when the Suits in Admiralty Act or related statutes were being amended. Each time, Congress declined to disturb the principle, choosing instead to build from it.

1. When *Johnson* was decided, concern was expressed about claimants who, in reliance upon pre-*Johnson* lower court holdings that the remedy provided by the Suits in Admiralty Act was not exclusive, had filed actions against the United States under the Tucker Act or actions at law against the Fleet

Corporation (see p. 13, n. 6, *supra*) in State or federal courts, and who now found themselves time-barred from bringing new actions under the Suits in Admiralty Act. See S. Rep. No. 771, 72d Cong., 1st Sess.; H. Rep. No. 1012, 72d Cong., 1st Sess. Although the *Johnson* decision was criticized in Congress as an "unexpected interpretation of the admiralty act" (H. Rep. No. 1012, *supra,* at p. 1), Congress declined to overrule it. Instead, Congress lifted the two-year limitations period in the Act for time-barred claimants who had filed timely actions in the Court of Claims or elsewhere prior to the *Johnson* decision. Act of June 30, 1932, c. 315, 47 Stat. 420, amending Section 5 of the Suits in Admiralty Act. These claimants could thus bring suit under the Suits in Admiralty Act notwithstanding the limitations period provided in the Act. But they could not bring Tucker Act or other proceedings outside the Suits in Admiralty Act. See S. Rep. No. 771, *supra,* at p. 2. Congress had accepted the basic holding of *Johnson.*

2. In revising Title 28 of the United States Code in 1948, Congress deleted the provision of the Tucker Act giving the Court of Claims jurisdiction over non-tort claims "in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable * * *." Act of June 25, 1948, c. 646, 62 Stat. 940. One of the reasons for deleting the "admiralty" portion of this provision, according to the Reviser's Notes, was that "the Court of Claims has no admiralty jurisdiction, but the Suits

in Admiralty Act * * * vests exclusive jurisdiction over suits in admiralty against the United States in the district courts." H. Rep. No. 308, 80th Cong., 1st Sess., Appendix, p. 138.

3. In 1950, Congress again amended Section 5 of the Suits in Admiralty Act. Act of Dec. 13, 1950, c. 1136, 64 Stat. 1112 (now the second proviso in 46 U.S.C. 745). This time, Congress lifted the limitations period to afford relief to seamen who, in reliance upon this Court's decision in *Hust* v. *Moore-McCormack Lines,* 328 U.S. 707, overruled in *Cosmopolitan Co.* v. *McAllister,* 337 U.S. 783, had filed suits against operating agents—instead of against the United States under the Suits in Admiralty Act—and who were time-barred from filing new actions under the latter Act.[8] Again, Congress chose to modify the limitations period under the Suits in Admiralty Act rather than disturb the principle that the remedy under that Act was exclusive.

Congress, in the 1950 Act, added another proviso to Section 5: "That where a remedy is provided by * * * [the Suits in Admiralty Act] it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim." Congress desired to make clear that the Act excluded actions under other

[8] See H. Rept. No. 2060, 80th Cong., 2d Sess., pp. 2–3; H. Rep. No. 1292, 81st Cong., 1st Sess., pp. 1–3; S. Rep. No. 1782, 81st Cong., 2d Sess., p. 2; S. Rep. No. 2535, 81st Cong., 2d Sess., p. 2.

statutes against the government's operating agent. The underlying assumption was that the Act's remedy was exclusive so far as the government itself was concerned.

> [T]he bill expressly restates the existing law that the remedy by suit against the United States is exclusive of every other type of action by reason of the same subject matter *against the United States* or against its employees or agents.[9]

4. In 1960, Congress empowered the Court of Claims to transfer to district courts cases over which the latter had exclusive jurisdiction, and provided that when this happened the original filing in the Court of Claims would toll the applicable statute of limitations. Act of Sept. 13, 1960, Pub. L. 86-770, 74 Stat. 912, 28 U.S.C. [redacted]. The assumption was that the district courts had an exclusive jurisdiction under the Suits in Admiralty Act. It frequently happened that lawyers filed in the Court of Claims suits cognizable under the Suits in Admiralty Act. These cases had to be dismissed because "exclusive jurisdiction is in the district courts in admiralty" (H. Rep. No. 523, 86th Cong., 1st Sess., p. 2; S. Rep. No. 1894, 86th Cong., 2d Sess., p. 3). When this happened a claimant might—and often did—find himself completely out of court, barred from filing a fresh action in a district court because of the expiration of the two-year limitations period. See H. Rep. No. 523,

[9] S. Rep. No. 2535, 81st Cong., 2d Sess., p. 1 (emphasis added). See, also, to the same effect, S. Rep. No. 1782, 81st Cong., 2d Sess., pp. 1-2.

supra, at pp. 2–3; S. Rep. No. 1894, *supra,* at p. 3. The Act removed this danger.

The same problem led Congress, in the 1960 Act, to abolish the distinction between public and merchant government vessels (see p. 9, n. 1, *supra*), which had caused uncertainty and led to frequent misfilings. S. Rep. No. 1894, *supra,* at pp. 2, 6. But, in amending the Suits in Admiralty Act to achieve this result, Congress carefully retained the requirement in Section 2 that suits under the Act "shall be brought in the district court * * *." It intended thereby to affirm the exclusivity of the district court's jurisdiction of causes encompassed by the Act. The amended Section 2

> restates in brief and simple language the now existing exclusive jurisdiction conferred on the district courts, both on the admiralty and law sides, over cases against the United States which could be sued on in admiralty if private vessels, persons, or property were involved. [S. Rep. No. 1894, *supra,* at p. 2.]

Repeatedly, then, Congress has accepted, as the basis of significant new legislation, the principle enunciated in the decisions of this Court that the jurisdiction conferred by the Suits in Admiralty Act is exclusive. It has legislated "with specific reference" to those decisions. Since they "are part of the arch on which the new structure rests," this Court should "refrain from disturbing them lest * * * [it] change the design that Congress fashioned."[10]

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[10] *State Bd. of Ins.* v. *Todd Shipyards,* 370 U.S. 451, 458. See, also, *United States* v. *Philadelphia National Bank,* 374

II. SEAMEN'S WAGE CLAIMS—TRADITIONALLY WITHIN THE ADMIRALTY JURISDICTION—ARE LITIGABLE UNDER THE SUITS IN ADMIRALTY ACT, AND THEREFORE CANNOT BE THE SUBJECT OF A SUIT IN THE COURT OF CLAIMS UNDER THE TUCKER ACT

If it is accepted that the remedy provided by the Suits in Admiralty Act for claims cognizable under it is exclusive and allows of no concurrent remedy under the Tucker Act, the only remaining question is whether the claims of the present petitioners are within the scope of the former Act. If they are, the Court of Claims acted correctly in transferring the cases to district courts. Since petitioners apparently do not disagree that the remedy under the Suits in Admiralty Act is exclusive, the question whether the Suits in Admiralty Act gives a remedy for seamen's wage claims is the heart of this case. We show in this part of our argument that it does. In the next part, we show that this answer, clearly compelled by law, is sound policy as well.

A. The Suits in Admiralty Act extends to all cases where, but for the doctrine of sovereign immunity, "a proceeding in admiralty could be maintained." The test is whether "the cause of action is maritime" (*Matson Navigation Co.* v. *United States,* 284 U.S. 352, 356, 357), which depends on whether the matters in issue are "characteristically within the admiralty jurisdiction." *Id.* at 358. Thus, whether in the present case there is jurisdiction under the Suits in Ad-

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U.S. 321, 340, n. 17, 349; *Davis* v. *Department of Labor,* 317 U.S. 249; *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356; cf. *United States* v. *Dixon,* 347 U.S. 381; *Overstreet* v. *North Shore Corp.,* 318 U.S. 125, 131–132.

miralty Act turns on whether seamen employed by the government could maintain a proceeding in admiralty for wages allegedly due them if the government were a private employer.[11]

This is the only test. For surely the Act was not intended to include some maritime causes and exclude others.[12] There is no basis in the language, structure, or legislative history of the Act for such a distinction—one which would be opposed to the basic thrust of the Act toward a uniform and inclusive admiralty remedy for maritime claims against the government. Petitioners' assertion (Br. 13) that the Act is limited to tort suits is particularly without basis, in view of this Court's express holdings that contract actions arising from the operation of government merchant vessels may be brought under the Act. *E.g., Shewan & Sons* v. *United States,* 266 U.S. 108; *Johnson* v. *Fleet Corp., supra; Matson Navigation Co.* v. *United States, supra; Calmar S.S. Corp.* v. *United States,* 345 U.S. 446, 455.

B. Clearly, a seaman's wage claim against his employer is within the traditional bounds of the ad-

[11] Petitioners' contention (Br. 11) that the Act is inapplicable because "there does not appear to be any situation in which a Government employee * * * could have a wage claim as a Government employee against a private owner or a private vessel" distorts the language of Section 2. The statute permits suit on a claim arising from the operation of a government vessel as "if such vessel were privately owned or operated"; if a vessel were privately owned, its employees would, of course, be private, not governmental, employees.

[12] Save in the very special situation presented by the Federal Employees Compensation Act, discussed in Point IV, *infra,* pp. 31–34.

miralty jurisdiction and could, in the case of a privately employed seaman, be the basis of a libel in admiralty. As Mr. Justice Story stated for the Court in *Sheppard* v. *Taylor,* 5 Pet. 675, 711 (a case where seamen brought a libel *in personam* for wages due them):

> It has been argued, that the admiralty has no jurisdiction in this case; but we are of the opinion, that the objection is unfounded. Over the subject of seamen's wages, the admiralty has an undisputed jurisdiction, *in rem,* as well as *in personam* * * *.

The Court has many times reaffirmed this principle, most recently in *Kossick* v. *United Fruit Co.,* 365 U.S. 731, 735: "Without a doubt a contract for hire either of a ship or of the sailors and officers to man her is within the admiralty jurisdiction." [13]

Since the test of jurisdiction under the Suits in Admiralty Act is whether a claim is maritime in character, and seamen's wage claims plainly are, the courts—including this Court—have repeatedly and without question or exception assumed jurisdiction

[13] To the same effect, see, *e.g., Oliver* v. *Alexander,* 6 Pet. 143, 146; *The Thomas Jefferson,* 10 Wheat. 428, 429 (pointing out that contracts for wages are within the admiralty jurisdiction where "the service was to be substantially performed on the sea, or on tide-water"); *Patterson* v. *Bark Eudora,* 190 U.S. 169; *United Fish Co.* v. *Erickson,* 248 U.S. 308, 312; *Strathearn S.S. Co.* v. *Dillon,* 252 U.S. 348; *The Steel Trader,* 275 U.S. 388; *Isbrandtsen Co.* v. *Johnson,* 343 U.S. 779; *The Sonderborg,* 47 F.2d 723 (C.A. 4), certiorari denied, 284 U.S. 618; *Putnam* v. *Lower,* 236 F.2d 561 (C.A. 9); *Monteiro* v. *Sociedad Maritima San Nicolas, S.A.,* 280 F.2d 565 (C.A. 2), certiorari denied, 364 U.S. 915.

under the Act of actions for wages brought by seamen employed on government ships.[14] Moreover, prior

[14] See *McCrea* v. *United States*, 294 U.S. 23; *Farrell* v. *United States*, 336 U.S. 511, 519–521; *The Meton*, 287 Fed. 531 (C.A. 4); *United States* v. *Smith*, 12 F.2d 265 (C.A. 5), certiorari denied, 271 U.S. 686; *Stetson* v. *United States*, 155 F.2d 359 (C.A. 9); *Shilman* v. *United States*, 164 F.2d 649 (C.A. 2), certiorari denied, 333 U.S. 837; *Shields* v. *United States*, 175 F.2d 743, 745 (C.A. 3), certiorari denied, 338 U.S. 899; *Page* v. *United States*, 177 F.2d 601 (C.A. 9); *Keen* v. *United States*, 199 F.2d 151 (C.A. 2); *Brown* v. *United States*, 283 Fed. 425 (N.D. Cal.); *Halvorsen* v. *United States*, 284 Fed. 285 (W.D. Wash.); *Buchanan* v. *United States*, 24 F.2d 528 (N.D. Cal.); *Grant* v. *United States War Shipping Administration*, 65 F. Supp. 507 (E.D. Pa.); *Butler* v. *United States War Shipping Administration*, 68 F. Supp. 441 (E.D. Pa.); *Bagley* v. *United States*, 77 F. Supp. 260 (N.D. Cal.); *Young* v. *United States*, 78 F. Supp. 954 (S.D. Tex.); *Aird* v. *United States*, 116 F. Supp. 281 (E.D. Pa.).

Petitioners assert (Br. 9) that, until recently, the Court of Claims assumed jurisdiction in actions involving wage claims of seamen employed on government vessels. They cite *United States* v. *Townsley*, 323 U.S. 557, affirming 101 Ct. Cl. 237; *Hearne* v. *United States*, 107 Ct. Cl. 335, 68 F. Supp. 786, certiorari denied, 331 U.S. 858; *Adams* v. *United States*, 141 Ct. Cl. 133; *Abbott* v. *United States*, 144 Ct. Cl. 712, 169 F. Supp. 523. However, it appears from the opinions in these cases that the jurisdictional question was not raised or noticed. Moreover, all of the cases arose prior to 1960; all apparently involved public vessels; and the Court of Claims had taken the position that the Public Vessels Act did not encompass all maritime contract actions. *Continental Casualty Company* v. *United States*, 156 F. Supp. 942 (Ct. Cl.). Since 1960, when the coverage of the Suits in Admiralty Act was broadened to include actions involving both public as well as merchant vessels, the Court of Claims has uniformly declined to entertain suits involving wage claims of government-employed seamen. Petitioners cite *Henderson* v. *United States*, 74 F. Supp. 343 (S.D.N.Y.), for the proposition that the Court of Claims has exclusive jurisdiction under the Tucker Act of suits for bonuses

to 1960, when the Suits in Admiralty Act was limited to actions involving merchant vessels, and admiralty actions involving public vessels were covered by the Public Vessels Act (see p. 9, n. 1, *supra*), the only two courts which considered the matter held that the Public Vessels Act likewise embraced actions against the government for seamen's wages. *Thomason* v. *United States*, 184 F. 2d 105 (C.A. 9); *Jentry* v. *United States*, 73 F. Supp. 899 (S.D. Cal.); but cf. *Eastern S.S. Lines* v. *United States*, 187 F. 2d 956, 959 (C.A. 1).[15]

C. Congress, too, has understood that wage claims by seamen who are employed by the government are embraced by the Suits in Admiralty Act. Thus, in Section 1 of the Clarification Act of 1943, 57 Stat. 45, 50 U.S.C. App. 1291(a) (enacted in order to define the rights of government seamen employed through the War Shipping Administration), Congress provided that claims of such seamen—expressly including claims involving the "collection of wages"—should "be enforced pursuant to the provisions of the Suits in Admiralty Act * * *." The legislative history indicates that this provision was based on the view that under existing law the government's merchant seamen were entitled to enforce their claims against

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by personnel employed on government vessels (Br. 15). However, in that case, also, the issue of jurisdiction was not raised.

[15] It has also been consistently held that wage suits by seamen employed by the government are subject to the two-year period of limitations applicable to cases under the admiralty acts (46 U.S.C. 745, 782). *Thomason* v. *United States*, *supra*; *Myers* v. *United States*, 81 F. Supp. 747 (E.D.N.Y.); *McKenna* v. *United States*, 91 F. Supp. 556 (S.D.N.Y.).

the government, including wage claims, in actions under the Suits in Admiralty Act.[16] As shown above (pp. 22–24), there was ample basis in the case law for assuming, as Congress did, that the right of a government merchant seaman to bring a wage claim against the government under the Suits in Admiralty Act was well settled. Congress, it is clear, believed that the only exception it was making in the Clarification Act's general pattern of treating the seamen subject to that Act as private rather than government personnel was in providing that their "rights shall be enforced in accordance with the provision of the Suits in Admiralty Act" (S. Rep. No. 1813, 77th Cong., 2d Sess., p. 6)—the assumption being that suits for the collection of wages were embraced by the Suits in Admiralty Act.

Since seamen's wage claims are litigable under that Act, it follows, for the reasons stated in Point I of our argument, that they cannot also be litigated un-

[16] Thus, the Senate Committee on Commerce, in pointing to some of the problems (such as the distinction between public and merchant vessels) in existing law which needed clarification, stated (S. Rep. No. 62, 78th Cong., 1st Sess., p. 5):

> These same rights [the rights and benefits of seamen in case of death, injury, illness, detention, and so on that would be available to them if employed by private employers] may be asserted against the United States as the employer under the Suits in Admiralty Act providing the vessel involved is a merchant vessel.

And the House Committee observed (H. Rep. No. 2572, 77th Cong., 2d Sess., p. 9): "Seamen employed as Government employees on vessels owned by or bareboat-chartered to the War Shipping Administration are sometimes precluded from enforcing against the United States the[ir] rights and benefits * * * except under the Suits in Admiralty Act."

der the Tucker Act, and that the Court of Claims, therefore, acted correctly in transferring petitioners' suits to the appropriate district courts. As next we show, there are no reasons of policy opposed to this result.

III. THE VIEW THAT THE DISTRICT COURTS HAVE EXCLUSIVE JURISDICTION OF WAGE CLAIMS UNDER THE SUITS IN ADMIRALTY ACT IS REQUIRED BY THE POLICIES OF THAT ACT AND IS FULLY COMPATIBLE WITH THE EFFECTIVE PROSECUTION OF SUCH CLAIMS AGAINST THE UNITED STATES

A. As noted earlier (pp. 14–15, *supra*), a fundamental policy of the Suits in Admiralty Act is to confine maritime causes against the United States to courts experienced in admiralty matters—the federal district courts. This policy would be undermined if wage claims were deemed excepted from the coverage of the Act, for such claims typically involve issues of a specialized admiralty character. Indeed, ordinarily a government seaman's wage claim presents precisely the same kinds of questions as those with which the district courts deal constantly in admiralty proceedings based on wage claims of privately employed seamen—which all concede are within the admiralty jurisdiction.

This is because in wage matters federal law does not treat government-employed seamen like other federal employees, but like other seamen. For one thing, the federal statutes applicable to the wages of privately employed seamen have been held to apply to govern-

ment-employed seamen as well.[17] For another, the statutes governing the wages of federal employees are largely inapplicable to government seamen. The very provision of federal law upon which the present suits are principally based—Section 202(8) of the Classification Act of 1949—exempts government employees who are members of the crews of vessels from the provisions of the Classification Act applicable to other government employees, and provides that their compensation shall be "in accordance with prevailing rates and practices in the maritime industry." Thus, Section 202(8) in effect incorporates by reference, and applies to government seamen, the rules, practices, and contracts governing the wages of private seamen. This means that a government seaman's wage suit must perforce be decided according to the law—admiralty law—of shipboard employment. Petitioners' complaints, with their allegations regarding

[17] See, *e.g.*, *The Meton*, 287 Fed. 531 (C.A. 4); *Brown* v. *United States*, 283 Fed. 425 (N.D. Cal.); and *Bagley* v. *United States*, 77 F. Supp. 260 (N.D. Cal.), all involving the one-month's-wages provision of 46 U.S.C. 594; *Butler* v. *United States War Shipping Administration*, 68 F. Supp. 441 (E.D. Pa.), involving the payment provision of 46 U.S.C. 596; *United States* v. *Smith*, 12 F. 2d 265 (C.A. 5), certiorari denied, 271 U.S. 686 (earned-but-unpaid-wages provision of 46 U.S.C. 597); *Larson* v. *United States*, 255 F. 2d 166 (C.A. 4) (fund for the relief of sick and disabled seamen under 46 U.S.C. 628, 706); *Shilman* v. *United States*, 164 F. 2d 649 (C.A. 2), certiorari denied, 333 U.S. 837, applying the provisions of 46 U.S.C. 596, 597, 600, 601, 682, 683, and 685 against the government. One possible exception to the applicability of these statutes to the government involves the double wage penalty provision of 46 U.S.C. 596. See *McCrea* v. *United States*, 294 U.S. 23, 25–26, reserving this question.

the pay of privately employed seamen and the collective bargaining agreements between maritime unions and private shipowners (R. 2–3, 10, 17–18, 28), clearly so indicate.

This is also true of petitioners' claims founded on the Federal Employees Pay Act. The Act requires overtime pay for an employee who works more than eight hours a day. Section 205, 5 U.S.C. 913; see 5 U.S.C. 673c.[18] But to determine the applicability of the statutory requirement to the present facts it will be necessary to determine what "port watch tours of duty" (see Statement, *supra*, p. 6) are and the significance of the Navy's practice with respect to work shifts on naval vessels (R. 9–10, 16–17). These are maritime issues—as are all of the basic issues in the four cases consolidated here—which, in our system, are the province of the federal district courts, our admiralty courts. They are not issues with which the Court of Claims has familiarity and experience or which arise in suits on wage claims of federal employees other than seamen.

B. The Suits in Admiralty Act provides a completely adequate remedial system for the vindication of seamen's wage claims. In some respects, it is a superior system, from the seaman's point of view, to that of the Tucker Act. For example, under the Tucker Act the only venue possible in many cases is the District of

[18] This is the only provision of the Act applicable to government seamen; they are exempt from all the other provisions. See Section 102(c) of the Act, 5 U.S.C. 902(c).

Columbia;[19] under the Suits in Admiralty Act, the plaintiff has a wide choice of venue. The plaintiff who prevails in a suit under the Suits in Admiralty Act receives more interest than he would in a Tucker Act suit. In district court Tucker Act cases, interest runs only from the date of judgment. 28 U.S.C. 2411(b). In Court of Claims cases, the interest provisions are even more limited. 28 U.S.C. 2516. But under the Suits in Admiralty Act interest may, in the discretion of the court, run from the date the libel is filed. 46 U.S.C. 743, 745. And the plaintiff can receive greater costs in a Suits in Admiralty Act case. Costs in Tucker Act suits are confined to witness and filing fees (28 U.S.C. 2412(b)), but a court may award costs generally in an action under the Suits in Admiralty Act. 46 U.S.C. 743.

In one respect only[20] is the Tucker Act a more desirable basis of suit from the wage claimant's point of view: it has a longer statute of limitations (six years) than the Suits in Admiralty Act (two). However, it is doubtful whether the shorter period actually impairs the ability of seamen to vindicate wage (or other) claims. Certainly, the experience of these petitioners lends no firm support to the view that it does. It is not clear that any of the claims involved in this case are time-barred under the Suits in Admiralty Act; it appears that most are not.[21]

[19] The Court of Claims' jurisdiction under the Tucker Act is exclusive not only in cases involving more than $10,000, but also in all cases, regardless of amount, involving pension claims. 28 U.S.C. 1346 (a)(2) and (d).

[20] Of course, under neither Act is there a right to jury trial.

[21] Of the 94 petitioners, 67 brought suit on November 12, 1964, for wage increases allegedly due beginning June 15, 1962, and

And petitioners do not contend that the two-year limitations period will, in general, prevent seamen employed by the government from vindicating wage claims.

The Maritime Trades Department of the AFL-CIO suggests in its brief *amicus curiae* (pp. 8–9) that seamen need the longer period of limitations because they spend so much time in foreign ports, where they have no opportunity to file lawsuits. But this overlooks the fact that the courts might well hold, if the issue arose, that the statute of limitations under the Suits in Admiralty Act was tolled during the period when a seaman claiming under the Act was abroad. The fact that the issue, to our knowledge, has not arisen once in the 46 years that the Act has been on the statute books—a period during which it was universally accepted that the Suits in Admiralty Act was the proper remedy for wage claims

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June 15, 1963 (R. 2–3). At most, claims for wages due between June 15, 1962, and November 12, 1962, will be time-barred; the greater part of their claims will clearly be timely. Nor is it clear that the claims for wage increases between June 15 and November 12, 1962, are in fact barred. In this case, there were administrative remedies which had to be (and petitioners alleged (R. 4) were) exhausted (see MSTS Civilian Marine Personnel Instructions, § 770.4–1.b). In *McMahon* v. *United States*, 342 U.S. 25, 28, the Court expressly left open the question whether the period of limitations prescribed in the Suits in Admiralty Act is tolled during the pendency of administrative proceedings. Some or all of the claims for the first five months after June 15, 1962, might thus be held timely, since it does not appear from the record how long the administrative proceedings took. As to the remaining 27 petitioners, the record does not disclose the period for which wages are claimed (see R. 7–11, 14–18, 25–29).

against the government (see pp. 22–25, *supra*)—is persuasive evidence that the two-year period has not, in practice, created an obstacle to meritorious claims.

Accordingly, there is no need to imply—in the teeth of the language and purpose of the Act—an exception for wage claims. They are traditionally maritime. They involve the same issues as other admiralty cases. And the Act provides a fully adequate procedure for their enforcement in admiralty.

IV. THIS COURT'S *JOHANSEN* AND *PATTERSON* DECISIONS LEND NO SUPPORT TO THE VIEW THAT A TUCKER ACT REMEDY FOR SEAMEN'S WAGE CLAIMS SURVIVED THE ENACTMENT OF THE SUITS IN ADMIRALTY ACT

We address ourselves finally to petitioners' contention that—notwithstanding all of the foregoing considerations—a contrary result is indicated by this Court's decisions in *Johansen* v. *United States,* 343 U.S. 427, and *Patterson* v. *United States,* 359 U.S. 495, albeit neither involved the question whether a Tucker Act remedy survived the passage of the Suits in Admiralty Act.

In those cases, the Court held that the admiralty statutes did not repeal the Federal Employees Compensation Act insofar as that Act gave seamen employed by the government, in common with other government employees, a workmen's compensation type of remedy; rather, it was the remedy under the Compensation Act that was exclusive. The Court's conclusion was based upon the nature of the remedy established by that Act, which, as the

Court emphasized in *Johansen*,[22] "undertook to provide a comprehensive compensation system for federal employees who sustain injuries in the performance of their duty." 343 U.S. at 432. "Such a comprehensive plan for waiver of sovereign immunity, in the absence of specific exceptions, would naturally be regarded as exclusive." *Id.* at 440. And the Court noted that it had already "accepted the principle of the exclusive character of federal plans for compensation." *Ibid.* Accordingly, the Court ruled that in enacting the admiralty acts Congress had not intended to displace the compensation scheme it had recently adopted as appropriate for dealing with personal injuries of federal employees—a "'system * * * of simple, certain, and uniform compensation'" (*ibid.*).

This reasoning does not control the question whether Tucker Act jurisdiction of seamen's wage claims was unaffected by the passage of the admiralty acts.[23] The Tucker Act was not a systematic effort to govern a particular area of employee rights; it was a general permission for suits against the government. It was not a compensation scheme, which the

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[22] *Johansen*, which held that, in light of the Compensation Act, a personal-injury action could not be maintained under the Public Vessels Act, is the principal decision. *Patterson* extended the ruling to the Suits in Admiralty Act, but in a very brief *per curiam* opinion which does not elaborate upon the reasoning in *Johansen*.

[23] Neither the majority nor dissenting opinion in *Johansen* (or the opinion in *Patterson*) alludes to the question, or suggests any qualification of the *Johnson*, *Matson*, *Brady* and other decisions holding that the Suits in Admiralty Act repealed the Tucker Act *pro tanto*.

Court has held ordinarily takes precedence over a tort remedy for the same claims (*Feres* v. *United States,* 340 U.S. 135), but a general grant of judicial power. Unlike the Compensation Act, the Tucker Act created no new substantive regulatory principles.

If Congress, in the Tucker Act, had taken in hand the problem of government seamen's wage claims, it might be a proper inference that the admiralty acts were intended, as it were, to legislate around the earlier enactment. But Congress did nothing of the kind in the Tucker Act. It was in the Suits in Admiralty Act—not the Tucker Act—that Congress undertook to establish a comprehensive remedial system for maritime contract claims, including wage claims. Congress thought such claims should be litigated in district court admiralty proceedings under the uniform procedures prescribed in the Act.

There is no anomaly in treating seamen employed by the government like other federal employees for Compensation Act purposes, and like other seamen for purposes of suing on wage claims. Seamen are a hybrid category of federal employees. While they are, of course, employees of the government, federal law treats them in some respects as if they were privately employed. One such respect is wages. The applicable statutes, as pointed out earlier (pp. 26–28, *supra*), provide in general that seamen employed by the government shall be treated as if they were privately employed It is therefore entirely appropriate that for purposes of suing to collect wages from

the government they, like their fellow seamen who are privately employed, should be directed to a remedy in admiralty.

CONCLUSION

The orders of the Court of Claims should be affirmed.

Respectfully submitted.

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